

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KRISTINA GARCIA,

Plaintiff,

v.

BEAUMONT HEALTH and RACHEL LUCA,

Defendants.

Case No: 19-11673

District Judge Linda V. Parker

Magistrate Judge David R.  
Grand

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**DECLARATION OF JEAN APHRAM**

In accordance with 28 U.S.C. § 1746, Jean Aphram states the following:

1. I make this Declaration based on personal knowledge of the facts stated herein. I am able to testify under oath if called upon to do so.

2. I am currently employed with Beaumont Health as the Director of Respiratory Care at its Royal Oak Hospital.

3. On Friday, September 7, 2018, I met with Rachel Luca to discuss Kristina Garcia's complaint that Ms. Luca was retaliating against her by talking to coworkers about Ms. Garcia's assault complaint. Ms. Luca denied talking about the incident or engaging in any improper conduct toward Garcia. Ms. Luca said that she felt she was the one being improperly targeted and falsely accused by Ms. Garcia. I advised Ms. Luca to bring her concerns to Human Resources if she felt that was the case.

4. On October 9, 2018, Ms. Luca's manager, James Burgess, and Human Resources representative Kevin Brancalone prepared written discipline for Luca in the form of a Performance Improvement Plan. That document is attached hereto at Exhibit 1. Mr. Burgess administered the discipline to Ms. Luca on October 18, 2018. Ms. Luca was not at work during normal business hours between October 9, 2018 and October 18, 2018, and that is why it was administered on October 18, 2018.

5. Mr. Burgess reported to me that Ms. Luca cried during the discipline and claimed it was unfair and that she was the one being bullied by Ms. Garcia.

6. During my March 13, 2020 deposition, I was asked whether the documents marked as Exhibit 6 were the correct packet of documents I provided to Human Resources Representative Kevin Brancalone on September 10, 2018. I said they were. That is not correct. Ms. Garcia's statement, control labeled 307-308 in Exhibit 6, is not the statement that was in the materials I provided to Mr. Brancalone. The statement included in Exhibit 6 to my deposition is dated September 10<sup>th</sup> and has handwriting on it that is not mine. The correct statement that I provided to Mr. Brancalone on September 10, 2018 is the one that was marked as Exhibit 3 to my deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 13<sup>th</sup>, 2020  
Royal Oak, Michigan

  
\_\_\_\_\_  
Jean Aphram

384997

## **Exhibit 1**

### **Jean Aphram Declaration**



## Performance Improvement Plan

Date Prepared: 10/9/18	Incident Date: / /				
Employee Name: Rachel Luca	Employee ID #: 241633	Department Name: Respiratory Care - RO	Position Title: Respiratory Therapist	Hire Date: 6/2/15	

### 1) Describe what happened:

#### What happened?

In August 2018, allegations of harassment and retaliation were brought to the attention of Respiratory Care management, regarding an alleged incident between Ms. Luca and another Respiratory Care employee. Respiratory Care leadership conducted an investigation into the matter. During the course of the department's investigation and in the time period which followed, Ms. Luca demonstrated poor judgment by discussing the details of the alleged matter with other hospital employees. Ms. Luca was given explicit instructions by Respiratory Care management to avoid doing so, yet several employee witnesses support the fact Ms. Luca has had discussions with other employees regarding the matter. Ms. Luca made a reckless behavioral choice to disregard management's direction in this situation.

#### What should have happened?

Ms. Luca had a duty to avoid causing substantial and unjustifiable risk or harm to others, as driven by her actions. Ms. Luca should have maintained an appropriate level of conduct and discretion, relative to communications in this matter. Ms. Luca should not have continued discussions, or shared details, relative to the circumstances or the investigation. If Ms. Luca had continued concerns in this matter, she should have approached Respiratory Care management with those concerns.

### 2) Please classify the behavior of the employee in the event: (not applicable to attendance/tardiness)

☐ Repetitive Human Error  
*Needs to be filed in HR. file*

☐ Repetitive At-Risk Behavior  
*Needs to be filed in HR. file*

☒ Reckless Behavior  
*Needs to be filed in HR. file*

### 3) Nature of incident: Please check the appropriate box or specify if incident is not listed.

*(This list is not inclusive of all possible incidents but rather those most commonly addressed with employees).*

☐ Failure to Follow Policy & Procedures

☐ Excessive Tardies

☐ Excessive Absences

☐ Quality of Work  
*(Poor Job Performance)*

☐ Neglect of Duty

☐ Failure to Follow  
Dept. Call-in Policy

☒ Failure to Follow  
Supervisor's Instructions

☐ Quantity of Work

☐ Violation of  
Confidentiality Policy

☐ Unexcused Absence

☐ Unprofessional  
Communication or Behavior

☐ Disorderly or  
Improper Conduct

☐ Failure to Complete or  
Maintain Mandatory  
Requirements

☐ Working but Impaired

☐ Falsification of Work  
Records

☒ Other Poor Job  
Performance -  
Inappropriate Behavior

### 4) Identify the duty(ies) which was breached/violated in accordance with Just Culture:

☒ Duty to Avoid Causing Unjustifiable Risk or Harm

☐ Duty to Follow a Procedural Rule (Unexcused Absence)

☐ Duty to Produce an Outcome (Attendance/Tardiness)

### 5) Supervisor expectations:

There is an expectation that in her interactions with others, Ms. Luca has a duty to produce appropriate outcomes, adhere to the Beaumont Standards of Service and follow the Hospital's Code of Conduct guidelines.

Ms. Luca is expected to perform her duties in a professional manner. Interactions with all individuals should occur with professionalism, mutual respect, discretion and proper conduct.

When given specific direction by her leadership team to avoid discussing the matter with other staff members, there was an expectation that Ms. Luca would follow that direction.





## Performance Improvement Plan

### 6) Check action given:

- ☒ Level I - Performance Improvement Plan  
☐ Level II - Performance Improvement Plan without Suspension  
☐ Level II - Performance Improvement Plan with    Day(s) Suspension – Dates:    /    /    to    /    /     
☐ Level III - Termination of Employment – Effective Date:    /    /

### 7) Employee background information:

Beaumont's Harassment Policy outlines that "Prohibited harassment is conduct that may affect any term, conditions or benefit of employment; interfere unreasonably with an individual's work performance; or create an intimidating, hostile, or offensive working environment."

Beaumont's Code of Conduct states that "As part of our commitment to having a respectful and inclusive workplace of choice, we do not allow harassment or bullying. we consider harassment to include language or conduct, which may be derogatory, intimidating or offensive to others."

Conduct on the part of a Beaumont employee that is inappropriate or that impedes harmonious interactions and relationships shall not be tolerated.

### 8) Consequences if the behavior/breach occurs again:

Given Ms. Luca's reckless behavioral choice to disregard management's direction in this situation, she is being issued a Performance Improvement Plan Level I for Poor Job Performance - Inappropriate Behavior.

Ms. Luca is expected to show immediate improvement and discretion in her interactions with others. As a part of this Performance Improvement Plan, Ms. Luca will enter a 30-Day evaluation period, reviewing her behavior and performance. Once she has successfully completed the evaluation period, she will be expected to maintain this improved behavior and performance throughout the remainder of her employment with the Hospital.

Failure to meet these expectations will result in further progression through the Hospital's Performance Management Program Policy (#282), up to and including Termination of Employment with Beaumont Health.

### NOTE:

- Receipt of two suspensions in an 18-month period of time will result in termination of employment.
- Employees in an active suspension will not be eligible for a salary increase for 18 months from the date of the incident.
- Licensed health care professionals will be reported to the State of Michigan Licensing Bureau in accordance with Michigan State law when suspension level and termination occurs.

I acknowledge that this discussion session has occurred, that my breach(s) has been reviewed with me, and I have received a copy of this form. I understand that my signature does not necessarily indicate that I agree with this action, only that I have received a copy of this form. I further understand that future breaches may result in additional disciplinary action up to and including discharge.

*Refused to sign*  
Employee Signature

10-18-19  
Date

Original sent to HR ☐  
Copy to Employee ☐  
Copy to Employee File ☐

This original Performance Improvement Plan will be maintained in the employee's personnel file in the Human Resources Department. All Level I, II and III Plans must have prior approval from the appropriate Administrator and the Human Resources Department.

*[Signature]*  
Dept. Supervisor Signature

10-18-19  
Date

*[Signature]*  
Dept. Manager Signature

10-10-18  
Date

*[Signature]*  
Administrator Signature

10/10/18  
Date

*[Signature]*  
Human Resources Signature

10.10.18  
Date